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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**I.T.R No.80 of 1998**
**Date of decision: 7.11.2006**

**The Commissioner of Income-tax, Jalandhar**

**...Petitioner**

**Versus**

**M/.S Bhagwati Rubber & Chemicals, Jalandhar ...Respondent**

**CORAM: HON'BLE MR.JUSTICE ADARSH KUMAR GOEL**
**HON'BLE MR.JUSTICE RAJESH BINDAL**

Present: Dr.N.L.Sharda, Advocate for the Revenue.

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**JUDGMENT**

Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar arising out of its order dated 23.12.1997 passed in I.T.A.Nos.622 and 784(ASR)/1991 , in respect of the assessment year 1989-90.

> "Whether on the facts and circumstances of the case, the Ld.I.T.A.T. was right in law by giving finding that the addition in capital accounts of the partners does not constitute cash credit of the firm whereas the same will constitute the investment of the individual partner to be looked into the individual assessment."

The Assessing Officer made addition to the income of the firm of the amount representing cash credit in the capital accounts of the partners. The defence of the assessee was that the partners received gifts and made deposits with the firm. This explanation was rejected.

The C.I.T.(A) upheld the plea of the assessee that partners may be liable to be proceeded against for unexplained income credited in their account with the firm but the said amount cannot be added to the income of the firm.

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The Tribunal upheld the above finding with the following observations:-

> "The first ground of the revenue is related to the addition of Rs.50,000/- made by the A.O. and deleted by the C.I.T.(A) on account of alleged gifts made by Sh.Montoo. The issue is linked with the receipt of gifts by Sh.Tarsem Kumar partner from Sh.Montoo. We have already held that unexplained capital investment or addition to the capital a/c cannot be made in the case of the firm. It is opened for the department to take necessary action in case of partners, if they are not satisfied about the genuineness of the credit. So far as the firm is concerned, the addition cannot be made. As such on this ground alone, we confirm the deletion of the addition made by the CIT(A)."

This Court examined an identical question in **Commissioner of Income-tax, Chandigarh-II Vs. M/S Metal & Metals of India, Mohali**, ITR No.370 of 2006 and vide judgment dated 6.11.2006 upheld the view taken by the Tribunal.

Accordingly, the question referred is answered against the Revenue and in favour of the assessee.

The reference is disposed of..

**(Adarsh Kumar Goel)**
**Judge**

**November 7, 2006** **(Rajesh Bindal)**
**Pka** **Judge**